

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 81 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

H.K. INVESTMENT CO.LTD.

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

1. INCOME TAX REFERENCE No. 81 of 1990
NOTICE SERVED for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1
-

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 04/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

The Income-tax Appellate Bench, Ahmedabad Bench
"B" has drawn a consolidated statement of case and

referred one question each at the instance of the assessee as well as at the instance of the department for the opinion of this Court. The following question of law is referred to at the instance of the assessee :-

"Whether, on the facts the Appellate Tribunal was right in law in holding that the interest paid under the provisions of the Income-tax Act, 1961 was not deductible expenditure in computation of the total income ?"

2. As far as the above question is concerned, the Tribunal has narrated the facts in para 2 of its order. The assessee in this case is a Company in which public are not substantially interested and the previous year of the Company relevant to the assessment year under consideration was ended on 31st March, 1982. The assessee submitted its return of income on 29.9.1982 disclosing the total income at Rs.4,20,588/-. The IAC had finalized the assessment under Section 143(3) assessing the total income of the assessee at Rs.5,46,621/- after making disallowances which, inter alia, include interest paid by the assessee under Sections 220, 139 and 215 of the Income-tax Act, 1961 aggregating to Rs.32,197/-. The assessee disputed the above disallowance of interest alongwith other issues in appeal before the Commissioner of Income-tax (Appeals) who dismissed the appeal and being aggrieved by the said order of the Commissioner of Income-tax (Appeals), the assessee went in further appeal before the Tribunal contesting the issue regarding deductibility of the interest paid under the provisions of the Act. The Tribunal rejected the contention of the assessee and confirmed the disallowance of the expenditure by way of interest relying on the judgment of the Bombay High Court in the case of CIT vs. Ghatkopar Estate & Finance Corporation (Pvt.) Ltd. (177 ITR 222). On these facts, the Tribunal has referred to the above question for the opinion of this Court.

3. Likewise, at the instance of the revenue, the following question of law is referred to this Court for its opinion :-

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in directing the assessing authority to recompute the amount of disallowable expenditure in the light of decision in the case of CIT vs. Chase Bright Steel Ltd. (177 ITR 127? ?)"

So far as this question is concerned, the facts as narrated by the Tribunal are that the assessee claimed expenses on maintenance of guest house. Such claim was rejected by the ITO by invoking the provisions of Section 37(4) of the Act. Against this disallowance, an appeal was preferred by the appellant and it was urged that the provisions of Sections 37(3), 37(4) and 37(5) of the Act apply only in relation to expenses which are otherwise allowable under Section 31(1) but do not apply to other expenses which are allowable under Sections 30 to 36 of the Act. The assessee has, therefore, contended that Rs.20,074/- was an allowable expenditure. The Commissioner of Income-tax (Appeals) has confirmed the said disallowance and being aggrieved by the said order of the Commissioner of Income-tax (Appeals), the assessee took up the matter before the Tribunal and the Tribunal has directed the Income-tax Officer to recompute the amount of disallowable expenditure in the light of the decision of the Bombay High Court in the case of CIT vs. Chase Bright Steel Ltd., 177 ITR 127. Against the above finding of the Tribunal, the revenue has come in reference before this Court and the above question was referred to for our opinion.

4. Hear Mr MR Bhatt, the learned senior standing counsel appearing for the revenue. No one appears on behalf of the appellant-assessee though the notice was duly served.

5. At the time of hearing of this reference, our attention was drawn to the decision of this Court in the case of Saraspur Mills Ltd. vs. Commissioner of Income-tax, (1997) 226 ITR 533 wherein this Court held that the interest paid for late payment of income-tax cannot be held to be allowable expenditure as the same cannot be held to be expenditure incurred wholly and exclusively for the purpose of the business. Since the controversy raised in the above question is resolved by the above referred decision, we are of the view that the Tribunal has rightly taken the view that the interest paid under the provisions of the Income-tax Act, 1961 was not deductible expenditure in computation of the total income. We, therefore, answer this question in the affirmative i.e. in favour of the revenue and against the assessee.

6. So far as the question raised by the revenue in the present reference is concerned, it is submitted by Mr Bhatt that the Tribunal has relied on the decision of the Bombay High Court in the case of CIT vs. Chase Bright Steel Ltd. and the said decision has been subsequently

followed by this Court in the case of CIT vs. Ahmedabad Mfg. & Calico Printing Co., (1992) 197 ITR 538 wherein this Court has held as under :-

"The assessee was, admittedly, a tenant of the premises described as residential accommodation in the nature of guest house and employees of the assessee stayed there for temporary periods. The assessee would be entitled to deduction of rent paid by him for such premises under sub-clause (1) of clause (a) of section 30. It would also be entitled to deduction of the cost of repairs to such premises. It was the case of the assessee that an expenditure of Rs.19,200 has been incurred in paying rent for the said premises described as guest house and Rs.539 for water connection. Both these items of expenditure would be covered by section 30(a)(i). The assessee not having claimed deduction under section 31(1), the question of disallowing any part of the said expenditure under section 37(4) did not arise. In other words, the expenditure could not be disallowed under section 37(4)."

7. In view of the above decision and in view of the facts and circumstances of the present case, we are of the view that the Tribunal was right in directing the assessing authority to recompute the amount of disallowable expenditure. We, therefore, answer this question in the affirmative i.e. in favour of the assessee and against the department.

8. The reference is accordingly disposed of with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-